

1 Vanessa R. Waldref
2 United States Attorney
3 Eastern District of Washington
4 Michael J. Ellis
5 Assistant United States Attorney
6 Post Office Box 1494
7 Spokane, Washington 99210-1494
8 Telephone: (509) 353-2767

9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

Case No. 2:21-CR-00091-TOR-1

13 v.

14 ANTOINETTE JAMES HOLMES,

15 Defendant.

GOVERNMENT’S SENTENCING
MEMORANDUM

16 Plaintiff, United States of America, by and through Vanessa R. Waldref, United
17 States Attorney for the Eastern District of Washington, and Michael J. Ellis, Assistant
18 United States Attorney for the Eastern District of Washington, submits the following
19 sentencing memorandum.

20 **I. BACKGROUND**

21 The Government agrees with the Offense Conduct summary outlined in
22 paragraphs nine through thirty-eight of the draft Presentence Investigation Report. *See*
23 ECF No. 88 at ¶¶ 9–38. Prior to his arrest, the Defendant was a prolific fentanyl dealer
24 in Eastern Washington and Idaho. During the conspiracy, a sixteen-year-old teenager
25 died of a fentanyl overdose following a transaction with the Defendant in Idaho. *See*
26 *id.* at ¶¶ 15–19. Further, co-defendant Allen’s then-five-month-old infant overdosed
27 on fentanyl (but survived) after the Defendant and co-defendant Allen used fentanyl
28 laced pills in the child’s presence. *See id.* at ¶ 20. Finally, another individual – D.K. –

1 to whom the Defendant distributed fentanyl laced pills died of an overdose, at a
2 minimum demonstrating that, even if the Government is unable to prove that the
3 Defendant distributed the dose that caused D.K.'s overdose, the Defendant's conduct
4 facilitated other individual's addictions resulting in additional death and misery
5 throughout Eastern Washington and Idaho.

6 **II. RESPONSE TO DEFENDANT'S OBJECTIONS TO DRAFT PSIR**

7 The Defendant raises a number of objections to the draft Presentence
8 Investigation Report. *See* ECF No. 89. The Defendant's objections primarily concern
9 tangential factual matters and should be overruled. *See* Fed. R. Crim. P. 32(i)(3)(B).
10 (noting that the Court can overrule objections if the Court "determine(s) that a ruling
11 is unnecessary either because the matter will not affect sentencing, or because the
12 court will not consider the matter in sentencing").

13 While the Government acknowledges that there is insufficient evidence to
14 prove that the Defendant provided the fentanyl dose that ultimately resulted in D.K.'s
15 death, the Defendant has been identified by numerous sources as D.K.'s fentanyl pill
16 supplier in the weeks preceding D.K.'s death. *See* ECF No. 88 at ¶¶ 36–37. The
17 Defendant's distribution to D.K. is accordingly relevant to the Defendant's overall
18 participation in the fentanyl distribution conspiracy. The information concerning
19 D.K.'s death also provides a tragic example of the larger harms of drug trafficking –
20 by distributing these dangerous pills throughout Eastern Washington and Idaho, the
21 Defendant left a path of death and misery in his wake. D.K.'s overdose stands as a
22 concrete example of the community harms associated with drug trafficking – the
23 Defendant facilitated D.K.'s addiction and, even if evidence cannot conclusively link
24 the Defendant to the pill that caused D.K.'s overdose, the Defendant still bears
25 responsibility for his death.

26 ///

27 ///

28 ///

1 **III. SENTENCING CALCULATIONS**

2 **A. Base Offense Level & Enhancements**

3 The Government agrees that the Defendant's base offense level is thirty-eight
4 (38), and that the base offense level is increased by two (2) levels as a firearm was
5 possessed in connection with the drug trafficking conspiracy. Further, the Government
6 concurs with the Presentence Investigation Report that the Defendant merits a three
7 (3) level reduction under USSG §3E1.1(a) and (b). Finally, the Government agrees
8 that the Defendant has one (1) criminal history points and a resulting Criminal History
9 Category of I. As such, the Defendant's offense level is thirty-seven (37) for a
10 guideline sentencing range of 210 to 240 months.

11 **IV. SENTENCING FACTORS UNDER 18 U.S.C. § 3553(a)**

12 In determining the appropriate sentence, this Court should consider the factors
13 as set forth in 18 U.S.C. § 3553(a).

14 A. The nature and circumstances of the offense and the history and
15 characteristics of the Defendant

16 The nature and characteristics of the Defendant's conduct warrant a concurrent
17 sentence with the sentence imposed by the United States District Court for the District
18 of Idaho in *United States v. Antoine James Holmes*, Case No. 2:21-cr-00118-BLW.
19 The Defendant's cases are related – the District of Idaho case involves the
20 Defendant's distribution of fentanyl laced pills to G.D., a sixteen-year-old teenager,
21 who subsequently overdosed on fentanyl.

22 The fentanyl distribution conspiracy engaged in by the Defendant was
23 extremely harmful to communities in Eastern Washington and Idaho, facilitating the
24 spread of noxious, dangerous fentanyl pills to people through Spokane, Pend Oreille,
25 and Bonner Counties. At least one person – G.D. – is known to have died as a direct
26 result of fentanyl distributed during the conspiracy and another – D.K. – died of a
27 fentanyl overdose after being supplied in the past by the Defendant. The Defendant
28 also used fentanyl in the presence of co-defendant Allen's five-month-old child – the

1 child overdosed but survived. The severity of the Defendant's conduct merits a
2 significant consequence.

3 The victim impact statements filed along with this memorandum demonstrate
4 the harm fentanyl distribution inflicts on the community. Lives are lost, which leaves
5 countless others in mourning and weighed down by the memories of family members
6 taken far too early. Compounding the tragic nature of the fentanyl epidemic is the
7 youth of many victims – D.K. was a young man while G.D. was a teenager. Both
8 could have lived long, productive, happy lives had the Defendant not engaged in
9 distribution. C.A. – who fortunately was revived – was only five-months-old; a baby
10 who was put in harm's way as a result of the Defendant's conduct. The extremely
11 irresponsible and careless nature of the Defendant's behavior demonstrates the danger
12 he poses to the community and justifies a lengthy sentence of incarceration.

13 The Government also requests that the Court impose a five (5) year term of
14 supervised release.

15 B. The need for the sentence imposed to reflect the seriousness of the offense,
16 promote respect for the law, and to provide just punishment

17 For the reasons discussed above, the Government asks that the Court sentence
18 the Defendant to a concurrent sentence with the Defendant's sentence in the District
19 of Idaho. Considering the nature of the offense and the Defendant's history, a
20 concurrent sentence is appropriate to reflect the seriousness of the conduct, promote
21 respect for the law, and provide just punishment.

22 The Government also asks that the Court order a five (5) year term of
23 supervised release.

24 C. The need for the sentence imposed to afford adequate deterrence to criminal
25 conduct

26 As discussed above, a concurrent sentence with the District of Idaho followed
27 by a five year term of supervised release will deter future drug trafficking activity by
28 the Defendant.

1 D. The need for the sentence imposed to protect the public from further crimes
2 of the Defendant

3 As discussed above, a concurrent sentence with the District of Idaho followed
4 by a five year term of supervised release will protect the public from future criminal
5 activity by the Defendant.

6 E. The need for the sentence imposed to provide the Defendant with needed
7 educational or vocational training, medical care, or other correctional
8 treatment in the most effective manner

9 The Defendant has expressed interest in vocational training while incarcerated
10 with the Bureau of Prisons. Further, the Defendant's term of supervised release could
11 provide the Defendant with tools to prevent his addiction from causing more criminal
12 behavior.

13 F. The kinds of sentences available

14 The Court may sentence the Defendant to up to twenty years imprisonment, a
15 fine of up to \$1,000,000, and between three years and a life term of supervised
16 release.

17 G. The kind of sentence contemplated by the Sentencing Guidelines

18 The Sentencing Guidelines contemplate a term of imprisonment.

19 H. Any pertinent policy statements issued by the Sentencing Commission

20 There are no pertinent policy statements in this case.

21 I. The need to avoid unwarranted sentence disparity among defendants with
22 similar records who have been found guilty of similar conduct

23 A sentence within the advisory guideline range would avoid unwarranted
24 sentence disparities.

25 J. The need to provide restitution to any victims of the offense

26 No restitution has been requested by any victim in this matter.

27 ///

As discussed above, the Government recommends that the Court impose a concurrent sentence with the District of Idaho followed by a five year term of supervised release with the conditions outlined in the draft Presentence Investigation Report. *See* ECF No. 88 at 26–30. Such a sentence is sufficient, but not greater than necessary, to accomplish the purposes outlined in 18 U.S.C. § 3553(a).

Vanessa R. Waldref
United States Attorney

s/Michael J. Ellis
Michael J. Ellis
Assistant United States Attorney

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

s/ Michael J. Ellis
Michael J. Ellis
Assistant United States Attorney